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**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]

DECISION

FCP/142968

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 10, 2012, under Wis. Admin. Code § DHS 10.55, to review a decision by the Care Wisconsin in regard to Medical Assistance, a hearing was held on November 28, 2012, at Waukesha, Wisconsin. The record was held open for 21 days following the hearing to allow the agency to review and respond to the Petitioner's exhibits and for the Petitioner to reply to the agency's response. The record was closed on December 19, 2012.

The issue for determination is whether the agency properly eliminated the Petitioner's Personal Emergency Response System (PERS) from her Care Plan services.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: Lindsay Marschke  
Care Wisconsin  
2801 International Lane  
PO Box 14017  
Madison, WI 53708-0017

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Waukesha County.

2. On August 1, 2012, the agency issued a Notice of Action to the Petitioner informing her that the agency intends to terminate her Personal Emergency Response System (PERS) effective August 15, 2012.
3. Petitioner has a live-in family caregiver to assist her with activities of daily living, home care and to provide supervision of her.
4. Petitioner has a telephone and is able to use the phone appropriately.
5. On August 10, 2012, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### **DISCUSSION**

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. Whenever the local Family Care program decides that a person is ineligible for the program, or when the CMO discontinues an ongoing service in the service plan, the client is allowed to file a fair hearing request. Because a service reduction is sought here, the Petitioner appropriately sought a fair hearing for a further, de novo review of the CMO decision. Wis. Admin. Code §DHS 10.55(1).

The state code language on the scope of permissible services for the FC reads as follows:

DHS 10.41 Family care services. ...

(2) SERVICES. Services provided under the family care benefit shall be determined through individual assessment of enrollee needs and values and detailed in an individual service plan unique to each enrollee. As appropriate to its target population and as specified in the department's contract, each CMO shall have available at least the services and support items covered under the home and community-based waivers under 42 USC 1396n(c) and ss.46.275, 46.277 and 46.278, Stat., the long-term support services and support items under the state's plan for medical assistance. In addition, a CMO may provide other services that substitute for or augment the specified services if these services are cost-effective and meet the needs of enrollees as identified through the individual assessment and service plan.

Note: The services that typically will be required to be available include adaptive aids; adult day care; assessment and case planning; case management; communication aids and interpreter services; counseling and therapeutic resources; daily living skills training; day services and treatment; home health services; home modification; home delivered and congregate meal services; nursing services; nursing home services, including care in an intermediate care facility for the mentally retarded or in an institution for mental diseases; personal care services; *personal emergency response system services*; prevocational services; protective payment and guardianship services; residential services in an RCAC, CBRF or AFH; respite care; durable medical equipment and specialized medical supplies; outpatient speech; physical and occupational therapy; supported employment; supportive home care; transportation services; mental health and alcohol or other drug abuse services; and community support program services.

Wis. Admin. Code §DHS 10.41(2).

Personal emergency response system services are included in the list of covered services in the statutory note above.

PERS is a necklace or bracelet alarm that a member wears to signal for help. It promotes safety while meeting the member's outcome to remain in the home.

The agency has Program Guidelines regarding the use of PERS. It indicates that the agency should consider a number of factors in determining whether to include PERS in a member's care plan. Portions of the guidelines that are pertinent to this case include:

- How does the request for the PERS meet a member's outcomes and goals?
- Utilize the RAD with the following considerations:
  - a. Isolation. Does the member live in an apartment building or neighborhood where they have frequent contact with neighbors?
  - b. Member cognition. . .
  - c. Does the member work or volunteer in the community; (consider clients physical ability to use 911 and the number of hours in the home).
  - . . .
  - f. Does the member have names for emergency contact?
  - g. Has the member had PERS in the past? Did they ever use it?

In this case, the Petitioner has a live-in family caregiver who is with her the majority of the day and night to provide assistance with daily activities and to provide supervision. The caregiver is able to respond to emergencies that might arise with the Petitioner. At those times when the caregiver might not be in the home, there was testimony that the Petitioner has a land line and is able to access and use the phone in the event of an emergency. I note that this case is a companion to DHA Case No. 142966 in which this same Petitioner was found to be entitled to 35 hours/week of paid supportive home care from her in-home caregiver. Because the caregiver is in the Petitioner's home to care for her the majority of the day and night, I find the agency properly eliminated the PERS service from the Petitioner's care plan. The agency indicated that if the situation should change with regard to Petitioner's live -in caregiver and the caregiver is no longer in the home as often as he currently is, the agency will reconsider the Petitioner's need for PERS.

Based on the evidence presented, I conclude that the agency properly eliminated the PERS from the Petitioner's care plan effective August 15, 2012.

### **CONCLUSIONS OF LAW**

Based on the evidence presented, the agency properly eliminated the PERS from the Petitioner's care plan effective August 15, 2012.

**THEREFORE, it is**

**ORDERED**

That the petition be, and hereby is, dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as

"PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

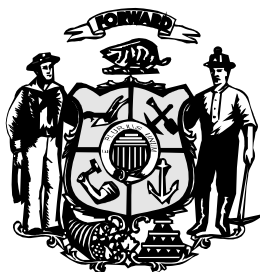
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 24th day of January, 2013

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on January 24, 2013.

Care Wisconsin  
Office of Family Care Expansion